

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE BOROUGH OF CATASAUQUA, LEHIGH COUNTY, PENNSYLVANIA, AMENDING ARTICLE VIII OF CHAPTER 230 OF THE CODE OF THE BOROUGH OF CATASAUQUA TO PROVIDE FOR RULES AND REGULATIONS RELATING TO EXCAVATIONS IN BOROUGH STREETS AND OTHER BOROUGH PROPERTIES BY CERTAIN PERSONS; TO PROVIDE FOR THE ADOPTION OF STANDARD CONSTRUCTION SPECIFICATIONS FOR SUCH WORK; TO ESTABLISH A PERMITTING PROGRAM AND TO SET PENALTIES AND OTHER LEGAL REMEDIES FOR A VIOLATION THEREOF**

**I. Legislative Findings**

**WHEREAS**, Section 1202 of the Borough Code, 8 Pa.C.S.A. §101 *et. seq.*, (hereinafter, “Code”), titled “Specific Powers,” grants certain powers to Borough Council (hereinafter, “Council”); and

**WHEREAS**, sub-section (5) thereof grants to Council the power to make regulations as may be necessary to maintain the health, safety and general welfare as well as the beauty, convenience, comfort and safety of the Borough; and

**WHEREAS**, sub-section (12) thereof grants to Council the power to regulate the streets, common grounds, sidewalks, curbs, gutters, culverts, drains and to prohibit the erection or construction of any obstruction to the convenient use of the same; and

**WHEREAS**, Section 1202(5) of the Code, authorizes Council to enact, revise, repeal and amend ordinances as it deems beneficial to the Borough and to provide for the enforcement of the same; and

**WHEREAS**, sub-section (3) of Section 1202 grants to Council the authority to impose fines and penalties; and

**WHEREAS**, Council has from time-to-time enacted ordinances consistent with the above-specified powers; and

**WHEREAS**, Council has adopted Ordinances relating to street excavations and providing for, among other things, certain definitions, a permit program and other rules and regulations relating to excavations in Borough Streets and including fines and penalties for failure to comply; and

**WHEREAS**, the Borough’s regulations relating to street excavations are codified at Chapter 230, Article VIII, of the Code of the Borough of Catasauqua (hereinafter, “Catasaqua Code”), Section 230-27 *et. seq.*;

**WHEREAS**, Council finds that certain persons excavating in Borough Streets have failed to properly perform and timely complete the work and provide appropriate traffic control measures, thus leaving the streets in poor condition, causing losses and inconvenience to adjacent businesses and landowners and creating potential hazards associated with the use of streets under construction; and

**WHEREAS**, Council finds that additional regulations are necessary to address excavations and work on other Borough properties and rights-of-way; and

**WHEREAS**, Council has determined that for all of these reasons it is necessary to update the existing permitting program, provide for an updated fee schedule, develop and adopt standard construction specifications and provide for a thorough observation and inspection program; and

**WHEREAS**, Council has determined that pursuant to the authority granted to it by the Code, Article VIII of Chapter 230 of the Catasauqua Code should be revised in accordance herewith.

**NOW THEREFORE**, the Council of the Borough of Catasauqua, Lehigh County, Pennsylvania hereby enacts and ordains the following:

## **II. Ordinance Text.**

1. Chapter 230, Article VIII of the Catasauqua Code, titled “Street Excavations,” is deleted in its entirety and the following is substituted therefore:

### **“ARTICLE VIII Excavations in Borough Streets and Other Borough Properties**

#### **§ 230-27. Applicability.**

The provisions of this Article shall apply to all persons who excavate or perform work of any other nature in or on Borough streets, property or rights-of-way, all as defined or otherwise stated herein. This Article shall not apply to sidewalks or curbs as otherwise addressed in Chapter 230 or to work performed pursuant to a recorded land development plan under Chapter 235.

#### **§ 230-28. Definitions and Interpretations.**

A. The following words and terms, when used in this Article, shall have the meanings ascribed to them in this Section, except in those instances where the context clearly indicates otherwise:

**ACT** - The Pennsylvania Underground Utility Line Protection Law,<sup>[1]</sup> Act 287 of 1974, as amended by Act 121 of 2003, and as may be supplemented or amended from time to time (citation).

**APPLICANT** - Any person who submits, or is required by this Ordinance to submit, an application for a permit to perform work falling within the scope of this Article. Applicants shall be limited to utility owners, adjacent or abutting landowners and others granted approval by the Borough, and with respect to all, their authorized agents, except that in the case of an authorized agent, the principal shall be a co-applicant and both the agent and principal shall be jointly and severally liable under the permit.

**BOROUGH** - The Borough of Catasauqua, Lehigh County, Commonwealth of Pennsylvania.

**EXCAVATION** - Any activity in the right-of-way of any Borough street or other Borough property or right of way which involves cutting, breaking, opening or disturbing the surface thereof.

**PENNDOT** - The Pennsylvania Department of Transportation.

**PERMITTEE** - Any person issued a permit in accordance with the requirements of this Article. The permittee shall be issued in the name of the applicant(s).

**PERSON** - Any individual, partnership, limited liability partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate or any other legal entity (whether or not for-profit or non-profit) and, with respect to all of the foregoing, its legal representatives, agents, officers or assigns.

**STANDARD CONSTRUCTION DOCUMENTS SPECIFICATIONS** - The set of standard construction ~~detail documents~~ and specifications duly adopted by resolution of Council and including any amendments thereto which are in force and effect at the time of application for a permit or at the time of application for renewal of a permit. Every permit issued in accordance with this Article shall be deemed to include as a part thereof, the most recent version of the Standard Construction ~~Documents Specifications~~, as amended.

**STREET** - Any public street, avenue, road, square, alley, highway or other public place located in the Borough of Catasauqua and established for the use of vehicles. The term "street" shall not include State highways.

**TRAVEL LANE** - The designated width of a street pavement to carry through or turning traffic and to separate it from opposing traffic, traffic in the same direction of flow but occupying other travel lanes, a parking lane, or the shoulder. The travel lane may be designated by pavement markings. If the travel lane is not designated on both sides by pavement markings, the travel lane shall be 12 feet in width as measured from an adjoining pavement marking or from the center line of the road, or from the edge of another travel lane (should the road contain more than two unmarked travel lanes). **[1] Editor's Note: See 73 P.S. § 176 et seq.**

Formatted: Highlight

B. In this Article, the singular shall include the plural and the masculine shall include the feminine and the neuter.

#### **§ 230-29. Permit Required.**

It shall be unlawful for any person to excavate or perform work in or on a Borough street, Borough property or other Borough right-of-way without first securing a permit in accordance with this Article.

**§ 230-30. Application for permit.**

A. Any person who shall desire to perform any excavation or work in or on any Borough street, property or other right-of-way shall submit a written application to the Borough Manager or his designee for that purpose. The application shall be made on a form provided by the Borough and shall set forth, among other things, the full name and address of the applicant; the location, inclusive dates and purpose of the work; the length, width, depth or other description of the excavation or the work and a description of all measures to be taken to protect motorists, pedestrians and others affected by the work.

B. The application shall contain an agreement by the applicant that the work shall be performed in compliance with all applicable laws, regulations, ordinances, resolutions and the Standard Construction Documents specifications.

C. The application shall contain an agreement by the applicant to indemnify, defend and hold harmless the Borough, Borough Council and all of their elected and appointed officials, agents, servants, consultants and employees of and from all actions, suits, judgments, demands, payments, claims, costs and charges, including reasonable court, attorney and consultant fees, which, in whole or in part, arise out of relate to the permit, the performance of the work under the permit or from any other matter, cause or thing relating thereto.

D. The form of the application shall be prepared by the Borough Manager or his designee, and it may be revised from time to time by the Borough Manager to require additional information which he shall deem appropriate.

E. The Borough Manager may forward the submitted ~~submit the~~ application to the Borough Engineer or Solicitor for review and comment.

F. The Borough Manager may reject an application which he determines to be incomplete in any material respect.

**§ 230-31. Permit Fee.**

A. At the time of application and as a part thereof, the applicant shall pay a permit fee in a minimum amount as shall be set from time-to-time by resolution of Council (the "minimum fee"). The minimum fee shall be in an amount deemed necessary to cover the cost of processing and issuing the application.

B. Where the work includes any longitudinal opening or excavation in excess of 25 lineal feet, the applicant shall pay, in addition to the minimum fee, an additional fee per foot as shall be set from time to time by resolution of Council.

C. Where the work does not involve excavation as described in B, above, but does involve occupancy of Borough property or right-of-way, in addition to the minimum fee, the applicant shall pay a fee as set from time-to-time by resolution of Council to occupy Borough property or right-of-way for such work.

D. In addition to the fees set forth above, the Applicant shall reimburse to the Borough its actual cost incurred for observation and approval of the work by the Borough Engineer. To meet its obligation hereunder, the Applicant shall establish and fund an escrow account in an amount reasonably deemed necessary to reimburse the Borough. Upon payment by the Borough to the Borough Engineer for services provided hereunder, the Borough may draw an equivalent sum from the escrow account for reimbursement. It shall be the obligation of the applicant to replenish the fund when the funds drop to less than twenty-five percent (25%) of the initial amount. In the event that the Applicant disputes the reasonableness or necessity or necessity of the Borough Engineer's invoice it shall do so by filing a request for a hearing before Council pursuant to applicable law. Excess funds in the account at the completion and approval of the work shall be reimbursed to the Applicant.

**§ 230-32. Issuance of permits restricted.**

An excavation permit shall be issued only to an Applicant, as defined herein.

**§ 230-33. Permit Approval / Disapproval.**

A permit issued hereunder shall contain, at a minimum, the information specified in Section 230-30 and shall be accompanied by a fee calculated in accordance with Section 230-31. An application not meeting the requirements of this Ordinance may be rejected at the discretion of the Borough Manager or his designee. If the application is disapproved, written notice thereof containing the reasons therefor, shall be provided to the applicant.

**§ 230-34. Responsibility to contact utilities.**

The work authorized by the permit is subject to all the provisions of the Act. It shall be the Applicant's responsibility to contact the utilities that have recorded their facilities in compliance with said Act.

**§ 230-35. Refilling; restoration; defects.**

Any person who shall perform excavation activities in accordance with a permit issued in accordance with this Ordinance shall thoroughly and completely refill the opening or excavation in accordance with the Standard Construction Documents Specifications, this Ordinance and the permit. All work shall be performed in a good and workmanlike manner and free of defects and in such a manner as to prevent any settling thereafter. Unless otherwise agreed in writing by the Borough, all surfaces shall be restored in such a manner as to conform to the proper grade and be of the same surface material as that abutting the excavation. If within two (2) years following the date of approval of the restoration of the surface as herein provided, there shall occur defects in the workmanship, the Borough shall notify the Applicant and the Applicant shall repair the same. If the Applicant fails to commence the repair within thirty days of the date of the notice of a defect, then the Borough may repair the same and charge and collect all costs and fees incurred as a result thereof from the applicant.

**§ 230-36. Responsibility of permit holder for and right of Borough to do certain work.**

All other work in connection with permits issued hereunder, including excavation, fill, maintenance, protection of vehicular, pedestrian and other forms of traffic, and temporary paving and other work shall be performed by the Applicant at his sole cost and expense and in a good and workmanlike manner in accordance with the Standard Construction DocumentsSpecifications, the permit, this Ordinance and all other applicable laws, regulations and ordinances. Such work shall be subject to the review and approval of the designated Borough Manager or his designee; provided that the Borough Manager, may, if deemed necessary to the proper and timely performance of the work, require that excavation and backfilling be performed by the Borough, in which event the Applicant shall reimburse to the Borough the actual cost of the work performed.

**§ 230-37. Requirements for work; correction of unsatisfactory work; completion of incomplete work.**

A. No opening or excavation in any street shall extend from a travel lane into an adjacent travel lane a distance greater than two feet before the initial travel lane is refilled and its surface restored to an acceptable temporary condition.

B. No excavation more than 100 feet longitudinally shall be opened in any street at any one time, and no extension thereof shall occur without Borough approval of the preceding opening.

C. The excavation shall be conducted so as not to damage, or interfere with, water lines, sewer lines or any other lines or facilities (sub-surface or otherwise), or their connections to any structures, unless and until permission of the owners or other proper authorities has been obtained.

D. No tunneling shall be permitted without the express permission of the Borough Manager or his designee and as made a part of the permit. Backfilling of a tunnel excavation shall be performed only in a method acceptable to the Borough and in the presence of the Borough Manager or his/her designee.

E. All openings or excavations shall be backfilled promptly with materials, all in accordance with the Standard Construction SpecificationsDocuments. In the event that a street is totally excavated and a completely new street constructed, the ordinances and specifications applicable to new construction shall apply.

F. Temporary pavement restoration shall conform to the Standard Construction Documents and be maintained for a minimum period of thirty (30) days following final restoration. The Borough, in its sole discretion, may waive the required thirty (30) day waiting period. After the required waiting period or following a waiver thereof, permanent pavement restoration shall be performed as specified herein.

G. On concrete base streets, such base shall be replaced with concrete, and the minimum size of the opening or excavation shall be 16 square feet.

H. Unless otherwise specified in the permit, all permanent paving restoration shall be completed within ninety (90) days of the issuance of the permit. Where an excavation is made within a travel lane, the entire existing width of the travel lane shall receive the mill and overlay as specified in the Standard Construction ~~Documents~~Specifications. Where an excavation is made within fifty (50) feet of any other opening or excavation within the travel lane by the same person, then that person shall perform additional mill and overlay for the full existing width of the travel lane so as to include the entire longitudinal distance between the outside limits of the openings or excavations.

I. During the making of any excavation, every necessary and reasonable precaution shall be taken by the Applicant to keep the street or other area(s) in a safe and passable condition both day and night through the use of traffic control measures including where appropriate, flagmen, guards, barriers, lanterns and other devices.

J. The Applicant shall notify the Borough Manager or his/her designee in advance of the following work in sufficient time for the Borough to provide for the presence of an on-site observer:

- (1) when the excavation is ready for backfilling and before any backfilling is done;
- (2) when backfilling work is completed;
- (3) when temporary restoration is complete; and
- (4) when permanent restoration is complete.

K. With the consent of the Borough, a portion of the Borough street or other property may be used for staging of equipment and materials during the workday; provided that all materials and equipment must be removed from the street right-of-way at the end of the day, unless otherwise agreed to by the Borough Manager or his designee. Any areas within the street right-of-way disturbed for the staging of equipment and/or material shall be returned to its original condition no later than 30 days following the date of final restoration.

L. In the event that the Borough Manager or his designee shall determine, in his sole opinion, that any work performed by or for an applicant is unsatisfactory and the work is not timely and properly corrected in accordance with the directives of the ~~the~~ Borough Manager or his designee, or in the event that the work for which the permit was granted is not completed within the time fixed herein or as specified by the permit; the Borough shall have the right but not the obligation to correct the work deemed unsatisfactory or complete any such work not completed timely and charge to the Applicant the cost thereof, plus 20%.

**§ 230-38. Emergency openings.**

Where the Borough or a person owning, operating or controlling any facility reasonably believes that there exists an emergency involving that facility requiring immediate excavation, it shall be lawful for that person to commence an excavation to remedy such condition before securing a permit, provided that application for a permit shall be made not later than the next business day following the emergency, and that such person complies with all other requirements of this Article. Nothing contained herein shall preclude the Borough from taking such measures as are deemed necessary to protect the public health, safety and welfare as shall be deemed necessary by the Borough Manager or his designee the circumstances of the particular case, and the Borough may perform such work shall and charge the same on the basis of cost plus 20% to such person.

**§ 230-39. Restrictions regarding trees and shrubbery.**

Except as set forth in the permit, the Applicant shall not remove or destroy trees or shrubbery within the work area except as set forth therein.

**§ 230-40. Work necessitating opening or excavation to be done prior to street improvement and not until five years thereafter; exception.**

A. Prior to the Borough undertaking the reconstruction and/or resurfacing of any street or right-of-way, the Borough Manager or his designee shall give timely notice to all persons owning property abutting on the street and to all utility companies operating in the Borough, and all such persons and utility companies shall perform all work which would involve the excavation of the street(s). All such work shall be performed within 30 days from the date of the notice, unless such time is extended, in writing, by the Borough Manager or his designee.

B. Except in the case of an emergency as set forth in Section 230-38, new paving performed by or on behalf of the Borough shall not be opened or excavated for a period of five years after the completion thereof. If for any reason other than an emergency, a person seeks an application to excavate within a Borough street or right-of-way within the five year period set forth above, the application shall be subject to the review and approval of the Borough Council who may place reasonable conditions on the approval thereof.

**§ 230-41 Permittee responsibilities for future relocation of work.**

If following the completion of work by an applicant the Borough street or right-of-way is widened or reconstructed or the alignment or grades are changed, the Applicant shall change or relocate all or any part of the facilities or structures covered by the prior permit(s) which interfere with the improvement(s). Such work shall be at the applicant's sole cost and expense.

**§ 230-42 Conditions for laying and extending utility lines.**

No new utility lines or facilities shall hereafter be laid or constructed, and no such existing lines or facilities shall be extended in any of the streets, rights-of-way or other properties

of the Borough until an application therefor shall have been first filed with the Borough and a permit issued. The Borough Manager or his designee shall not approve the locating of any such line or facility at a depth of less than 30 inches from the surface of the street unless such depth is determined to be impossible or impractical.

**§ 230-43 Bond and Insurance Requirements.**

A. No permit shall be issued unless and until the Applicant shall have posted a bond or other security in a form and amount satisfactory to the Borough. The posted security shall secure the faithful performance of the work by the applicant.

B. No permit shall be issued unless and until an applicant provides proof of insurance on an occurrence basis as follows:

- (1) General Liability in an aggregate amount of Two Million Dollars;
- (2) Completed Operations in an aggregate amount of Two Million Dollars;
- (3) Pollution Coverage (if deemed necessary by the Borough);
- (4) Auto Coverage with a combined single limit of One Million Dollars; and
- (5) Umbrella Coverage in an amount of Five Million Dollars.

C. The Applicant shall name the Borough and all of its Councils, Committees and Commissions, and with respect to all, their elected and appointed officials, consultants and employees as additional insureds for all claims which in whole or in part arise out of or relate to the permit or the performance of the work under the permit. The additional insurance shall be primary over all other applicable policies of insurance maintained by the additional insureds.

D. The bond and insurance requirements of this Section may be waived in whole or in part by Borough Council at the request of an Applicant.

**§ 230-44 Payment for work performed by Borough.**

Payment for work performed by the Borough under the provisions of this Article shall be made by the Applicant within thirty (30) days of the date of the bill issued for such work. Upon failure to pay or timely pay the amount due, the same shall be collectible by the Borough by an action in assumpsit or in the manner provided by law for the collection of municipal claims. Unpaid amounts will carry interest from the date payment is due at the rate of one and one-half percent (1.5%) per month, not to exceed eighteen percent (18%) per annum. In an action brought to collect sums due and owing under this Article, the Borough shall be entitled to recover all costs and reasonable attorney and consultant fees.

**§ 230-45 Violations and penalties.**

Any person, firm or corporation who shall violate any provision of this article shall, upon conviction thereof, be sentenced to pay a fine of not more than One Thousand Dollars (\$1000.00) and/or to imprisonment for a term not to exceed 90 days. Every day that a violation of this article continues shall constitute a separate offense. In an action brought under this Section, the Borough shall be entitled to recover all costs and reasonable attorney and consultant fees.”

**III. Effective Date.**

This Ordinance shall become effective in accordance with Section 3301.3 of the Borough Code.

**IV. Protanto Repeal.**

Unless otherwise specifically stated in this Ordinance, all ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

**V. Savings Clause.**

To the extent that any word, portion or provision of the text hereof is found by any court of competent jurisdiction to be invalid or void on constitutional or other grounds, such word, phrase, portion or provision shall, if possible, be deemed to be repealed and those remaining valid portions of the text shall remain in full force and effect if same can be accomplished without the structure of the Ordinance having been destroyed by the elimination of that word, phrase, portion or provision found to be invalid or void.

**DULY ENACTED AND ORDAINED** this \_\_\_\_ day of \_\_\_\_\_, 2018, by the Borough Council of the Borough of Catasauqua, Lehigh County, Pennsylvania, in lawful session duly assembled.

**BOROUGH OF CATASAUQUA**

**BY:** \_\_\_\_\_  
**Vincent Smith, Council President**

**ATTEST:** \_\_\_\_\_  
**Steven Travers, Secretary**

**AND NOW**, this \_\_\_\_\_ day of \_\_\_\_\_, 2018, the above Ordinance is hereby **APPROVED** by the Mayor of the Borough of Catasauqua in due course.

\_\_\_\_\_  
**Barbara Schlegel, Mayor**  
**Borough of Catasauqua**

